Office-Supreme Court, U.S.
FILED
SEP 1 1980
ALEXANDER L. STEVAS,

80-1843
No. 80-

In the Supreme Court of the United States

OCTOBER TERM, 1980

ROBERT C. and PATRICIA R. YOUNG,
JANE JONES, AND FELLOWSHIP OF CHRIST CHURCH,
PETITIONERS,

VS.

ROBERT and JUDITH BOGRETTE, WILLIAM and TRACIE CUPPIE,
OLAF and EMERIN HELLAND, JOHN T. and BERNICE HUGHES,
KENNETH and ELIZABETH STAUGAARD, CHARLES and
CAROL COHOON, and LEO W. BURTON,
RESPONDENTS.

PETITIONERS' REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MICHIGAN

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QUESTIONS PRESENTED

1. Does the Fourteenth Amendment prohibit a court from deciding a case based upon matters which the court stated at the commencement of trial were not in issue in the case, and from granting relief to a party far beyond which the court stated (at the start of trial) could be awarded in the case?

2. Do the First and Fourteenth Amendments to the Constitution of the United States prohibit a civil court from dissolving a duly constituted church and appointing a receiver over its property without, at a minimum, affording prior notice and an opportunity to defend?

3. Do the First and Fourteenth Amendments prohibit a civil court from resolving disputes involving real property by reference to church doctrine?

4. Does Michigan Statute (MCLA §450.180) prohibit courts of that state from dissolving a duly constituted church and appointing a receiver over its property absent initiation of *quo warranto* proceedings by the Michigan Attorney General?

5. Did the trial court err when it failed to resolve the case upon the basis of the statute of frauds and failed to find that respondents did not prove the existence of a joint venture to develop the property in issue?

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PETITIONER'S REPLY

At the time that the Petition for a Writ of Certiorari ("Petition") was submitted in this cause, a motion for intervention, filed in the Michigan Supreme Court by the Michigan Attorney General, was pending.[1] However, on May 27, 1981, the Michigan Supreme Court denied the Attorney General's motion.[2] Thus, although the Attorney General for the State of Michigan has stated that the judgment should be declared void because the trial court exceeded its jurisdiction, the Michigan Supreme Court declined to consider this issue on its merits.

I.

A LITIGANT MUST BE ABLE TO RELY ON A TRIAL COURT'S EXPRESSED LIMITATION OF THE ISSUES TO BE TRIED AND THE EXTENT OF THE RELIEF AVAILABLE TO THE PARTIES. PETITIONERS' RIGHT TO DUE PROCESS OF LAW WAS VIOLATED IN THE INSTANT CASE BECAUSE THE COURT, WITHOUT NOTICE, DECIDED THE CASE ON A BASIS CONTRARY TO, AND GRANTED RELIEF WHOLLY BEYOND, THE PREVIOUSLY EXPRESSED LIMITATIONS

Respondents begin their Brief in Opposition to Petition for a Writ of Certiorari ("Opposing Brief") by stating that this case involves an attempt "to prevent [p]etitioners from absconding to the Province of British Columbia" with all of the property of the Fellowship of Christ Church (Opposing Brief, p. 3). This *ad hominem* argument seems calculated to obfuscate the true facts and legal issues presented to this Court for review. Indeed, if the trial record is examined, absolutely no evidence will be found that the petitioners

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[1] *See* Petition, p. 6.

[2] The Michigan Supreme Court also denied petitioners' motion for reconsideration of that Court's previous denial of their application for leave to appeal from the decision of the Michigan Court of Appeals.

were attempting to abscond with property not belonging to them; nor was it ever asserted that Church assets were to be used for other than Church purposes. The reason for this is quite simple: the litigation *only* concerned legal entitlement to the 22 acres of land in question. Stated in other terms, the sole issue presented to the trial court was whether or not the Fellowship of Christ Church and its Advisory Board breached an alleged joint venture agreement with respondents, former members of the Church, by attempting to sell certain realty which had been titled in the name of the Church for seventeen years. Respondents claimed that the property belonged to the venturers; petitioners asserted that it belonged to the Church. The respondents did not claim that they constituted the Church congregation or that the petitioners did not; nor did the respondents assert that the Church could sell the property for some purposes but not for others. In other words, whether or not the congregation intended to sell some of its property and move from Rochester to Detroit, or to Chicago, or even abroad, was and is immaterial to the only issue tried to the circuit court, viz., who is entitled to the 22 acres in question?

The trial record discloses that the decision to relocate the Church was made by the congregation openly and was conveyed to the respondents (and to the general public) almost two years before this suit was instituted:

1. A recommendation to sell the Church property was made by the Advisory Board of the Fellowship of Christ Church on July 4, 1975.

2. This decision was ratified unanimously by the Church congregation on July 20, 1975 (defendants' trial Exhibit D).

3. On August 14, 1975, Robert C. Young wrote to the respondents to advise them of the Church's decision to sell the property (see deposition Exhibit 4 to the deposition of Robert C. Young, pp. 91-8).

4. Kenneth Staugaard, and the other respondents, acknowledged receipt of this letter and wished the Church congregation well (see deposition Exhibit 3 to the deposition of Kenneth Staugaard, pp. 111-2).

5. The Fellowship of Christ Church offered to sell the property in question to the Church which respondents had joined (when they withdrew from the Fellowship of Christ Church in 1969), but the offer was declined.

6. The property was advertised for sale in the *Detroit Free Press* on August 20, 1975, and was later listed with two different real estate agents.

7. In the Spring of 1976, Fellowship of Christ Church counsel in Michigan and Canada began to prepare legal papers to accomplish relocation of the Church corporation to British Columbia. The Michigan Department of Commerce was contacted in this regard.

8. Upon the advice of a real estate agent engaged by the Church, on January 11, 1977, the Church petitioned to have a portion of the property subdivided (plaintiff's trial Exhibit 50). This petition was denied due to inadequacy of easements to the property.

9. Respondents initiated this lawsuit on March 7, 1977.

In sum, respondents have tried to create the impression that the Church's decision to sell its property and to relocate was reached in a clandestine manner to allow petitioners to "abscond" with certain unspecified property of the Church. This is untrue and unsupported by the record.

Respondents also assert throughout their Opposing Brief that petitioners Young and Jane Jones intended to appropriate Church property for their personal use. This also is untrue. No such allegations were made, defended, or proved. The respondents asserted that *the Church's* decision to sell its property and to relocate was contrary to the alleged joint venture and it is *that decision* which forms the basis of the Cohoon Complaint. Neither the respondents nor the trial judge ever asserted during trial that the actions of the individual petitioners were not taken on behalf of the Church.

Respondents concede that the trial court expressly limited the parties to the facts pleaded and relief sought in the Cohoon Complaint; this, they say, states the obvious (Opposing Brief, p. 12). It *is* obvious because anything less would violate a litigant's due process right to "know the claims of the opposing party and [be afforded an

opportunity] to meet them." (*Morgan* v *United States*, 304 U.S. 1, 18 (1938)).

Respondents tried their case, and petitioners defended it, strictly in accordance with the claims and prayers contained in the Cohoon Complaint. On the basis of that Complaint, respondents sought to prove that they were entitled to the 22 acres of land under their joint venture theory. Petitioners, on the other hand, asserted than no such joint venture ever existed; they contended that the property was purchased, maintained and developed by the entire Church congregation and not by and for the benefit of a certain select few. At the conclusion of respondents' proofs, petitioners believed that the trial testimony of respondents established this conclusion beyond dispute and, thus, presented no testimony of their own.

If petitioners had been apprised through the Cohoon Complaint, or by statements made during trial (by the respondents or the trial judge) that the court would consider such issues as (a) the *bona fide* existence of the Church; (b) composition of the Church membership, (c) use of Church property for individual purposes and (d) dissolution and receivership, then petitioners most certainly would have responded in an appropriate manner. However, because these questions were never raised, petitioners never sought to answer them.

For example, in their Opposing Brief, respondents concede that they never claimed any of the petitioners set out to defraud them. They state, as if to apologize for the trial court's opinion, that respondents "did not allege fraudulent inducement nor did [r]espondents desire to make this an allegation." (Opposing Brief, p. 12.) Yet, can there be any doubt that the trial judge, for reasons which are not in the record, based his entire decision on the belief that petitioners established the Church and sought to use it to defraud the respondents? Similarly, respondents admit that they "did not specifically pray for the dissolution of the ecclesiastical corporation or the appointment of a receiver." (Opposing Brief, p. 20.)

If due process means anything, it must mean that petitioners should not have to present evidence in defense of actions which have never been called into question or to avoid consequences which have

never been threatened. This is why respondents' attempt to justify the trial court's decision is so offensive: to support the trial judge's opinion on the basis of alleged wrongdoing which *no one* ever questioned, and to support the judgment, under which petitioners' *Church was dissolved*, on the basis of abstract notions of equitable power, is so inherently unfair as to shock the conscience and render the rule of law meaningless.

II.

THE FIRST AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES PROHIBIT A CIVIL COURT FROM DISSOLVING A DULY CONSTITUTED CHURCH AND APPOINTING A RECEIVER OVER ITS PROPERTY WITHOUT, AT A MINIMUM, AFFORDING PRIOR NOTICE AND AN OPPORTUNITY TO DEFEND. PETITIONERS' CONSTITUTIONAL RIGHTS WERE VIOLATED WHEN THE TRIAL COURT, WITHOUT NOTICE, DISSOLVED THE FELLOWSHIP OF CHRIST CHURCH AND APPOINTED A RECEIVER OVER ITS PROPERTY.

This issue is extensively discussed at pages 15-17 of the Petition for a Writ of Certiorari. In their Opposing Brief, respondents concede that they sought neither dissolution or receivership, but state merely that petitioners should have known that such "were forms of relief within the equitable jurisdiction of the trial court" (Opposing Brief, p. 20). Petitioners trust that this Court will not permit such penalties to be imposed, under the guise of law, on persons or institutions in this country without fair notice and an opportunity to defend.

Moreover, even assuming *arguendo* that alleged misconduct of petitioners had been claimed and proved, remedies far less intrusive than dissolution were available and should have been employed. The recent Michigan case of *Petitpren* v *Taylor School District*, 104

Mich App 283 (1981), reported subsequent to the filing of the Petition, is squarely on point. In that case, the plaintiff was suspended from his position as superintendent of schools by the Taylor Board of Education due to alleged financial misconduct. After a number of hearings on plaintiff's suit to challenge the dismissal, the trial court appointed a receiver for the school district. The Michigan Court of Appeals reversed, holding that the trial judge exceeded his jurisdiction by appointing a receiver for the school district under the circumstances presented. The Court held that appointment of a receiver is a "harsh remedy" to be used only in extreme cases and *only if* "less intrusive means" are unavailable to effectuate the relief granted by the trial court (104 Mich App at 295).

The Court noted that plaintiff's suit was instituted "in order to challenge his suspension" and that it "is difficult to imagine how a receivership was in any way ancillary to the relief sought" (104 Mich App at 296). As in the instant case, the Michigan Court of Appeals also observed

> "it is striking that none of the parties present in the case at the time the receivership was ordered had ever requested such relief. Imposition of the receivership was totally unconnected with the questions that needed to be resolved...." 104 Mich App at 297.

For like reasons, this Court is asked to hold that judicial interference on the scale undertaken in the instant dispute cannot be tolerated.[3]

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[3] See, also, *People* v *Israelite House of David*, 246 Mich 606 (1929), involving an action brought by the Michigan Attorney General to abate an alleged public nuisance created by the leaders of a religious association. On review, the Michigan Supreme Court affirmed the circuit court decree granting injunctive relief to abate the nuisance, but held that it was error for the trial judge to appoint a receiver over the association's property because it appeared that its members had been defrauded. The Michigan Supreme Court summarized plaintiffs' arguments as follows:

> "The plaintiff's contention is that equity having acquired jurisdiction full relief should be rendered, and if necessary, a

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III.

THE FIRST AMENDMENT REQUIRES THAT NEUTRAL PRINCIPLES BE EMPLOYED BY CIVIL COURTS WHEN RESOLVING CHURCH DISPUTES. IN THE INSTANT CASE, THE TRIAL COURT FAILED TO APPLY NEUTRAL PRINCIPLES, IN VIOLATION OF PETITIONERS' CONSTITUTIONAL RIGHTS.

Respondents state that the trial judge acknowledged the constitutional restraints of the First Amendment and then "proceeded to decide the parties' dispute strictly upon the neutral principles of joint venture. . . ." (Opposing Brief, p. 15). In fact, this is not what happened at all. As petitioners note at page 15 of their Petition, the trial judge acknowledged that a court cannot interfere in the internal affairs of a church, but then proceeded to do that very thing based upon his conclusion that the Fellowship of Christ "was a church without a congregation" and that "the so-called ecclesiastical corporation [was] not a church."

Respondents do not dispute the fact that no such claims had ever been made prior to or during trial; they state merely, without explanation, that "there were many reasons to doubt" that the Fellowship of Christ was a bona fide church. Respondents never raised

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> receiver or conservator of the property should be appointed by the court to assist in attaining the ends of justice." 246 Mich at 616.

The Court, after observing that "the particulars of any alleged frauds are [not] set forth in the pleadings" and that the "primary purpose of this suit" was to abate a nuisance (246 Mich at 617), stated in support of its decision to set aside the receivership:

> "We know of no authority which would justify the State in attempting to intervene and in a paternalistic way by means of a receivership work out collectively the various conflicting claims of the defendants." 246 Mich at 617.

such doubts — nor did the court — and, as a result, they can point to nothing in the record to support the trial judge's statements. Respondents' ambiguous representation that "[e]ssentially the only members of the so-called church" were petitioners Robert and Patricia Young and Jane Jones is unsupported in the record and untrue; however, for reasons stated in the Petition, *even if it were true*, that would not justify the trial court's conclusion that a church did not exist.

IV.

MICHIGAN STATUTE (MCLA §450.180) PROHIBITS COURTS OF THAT STATE FROM DISSOLVING A DULY CONSTITUTED CHURCH AND APPOINTING A RECEIVER OVER ITS PROPERTY ABSENT INITIATION OF *QUO WARRANTO* PROCEEDINGS BY THE MICHIGAN ATTORNEY GENERAL.

As noted at the outset of this Reply Brief, the Michigan Supreme Court declined to consider the merits of the Michigan Attorney General's assertion that the trial court exceeded its jurisdiction, rendering void the judgment upon which this certiorari petition is based. Respondents do not attempt to distinguish the clear Michigan case law holding that only the state's Attorney General has authority to initiate proceedings to obtain *quo warranto* relief, *Jackson Prosecutor* v *Sisters of Mercy*, 74 Mich App 374 (1977), and absent compliance with this requirement, courts lack the jurisdiction to render a valid judgment. *Dartland* v *Hancock Schools*, 25 Mich App 14 (1970).

V.

THE TRIAL COURT ERRED WHEN IT FAILED TO RESOLVE THE CASE UPON THE BASIS OF THE STATUTE OF FRAUDS AND FAILED TO FIND THAT RESPONDENTS DID NOT PROVE THE EXISTENCE OF A JOINT VENTURE TO DEVELOP THE PROPERTY IN ISSUE.

At the conclusion of respondents' case, petitioners believed that respondents had failed to prove the existence of a joint venture. The trial judge had already recognized that respondents had not produced any written evidence of the venture (Petition, p. 23). Furthermore, petitioners believed that respondents had not proved the existence of a venture based upon the trial testimony. That respondents purchased their individual lots without any other understanding (Petition, pp. 25-6) is borne out by the trial judge's finding "until the time of the disagreement which came about . . . no one discussed such esoteric questions as property rights. . . ." (Appendix to Petition, 3a). The testimony showed, furthermore, that the twenty-two acres in question had been purchased *by the Church* in 1960 and since that time has been continuously financed, developed and maintained by the entire Church membership for the Church congregation and not by and for the benefit of a special interest group of the respondents.[4]

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[4] As noted, according to respondents' theory of the case, as a result of private meetings and discussions not made known to the general Church congregation, Appendix to Petition, 1w, respondents, though Elders and Officers of the Church, schemed to obtain ownership of the 22 acres at the expense of the general Church congregation. That such an arrangement actually existed is incredible and to enforce it would be manifestly unjust.

VI.

CONCLUSION.

The trial judge, without warning, rendered an opinion replete with erroneous facts, extraneous material and extravagant language directed against the petitioners on issues never in the case. Petitioners' reliance on the pleadings and proofs presented at trial was proper, but the trial court violated its own order limiting the issues and has violated petitioners' due process and First Amendment rights as a result. In doing so the Court, without being asked and without any support in the record, decided that petitioner was not a church; proceeded to dissolve it; and appointed a receiver over its assets. All of this was done, apparently, on the premise that such a small congregation did not deserve recognition as an ecclesiastical corporation nor did it even have the right to continue to exist. The annals of jurisprudence in this country can be searched in vain for a more blatant example of the extermination of a church by judicial fiat.

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Dated: August 28, 1981